

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,)	
)	Civil Action
Plaintiff)	No. 02-CV-02387
)	
vs.)	
)	
MAURA J. KENNEY;)	
ZACHARY KENNEY, a Minor, by)	
his Parent and Natural Guardian,)	
MAURA J. KENNEY; and)	
CHRISTOPHER DOGGENDORF, a Minor,)	
by and through his Parents and)	
Natural Guardians,)	
SUZANNE and DAVID DOGGENDORF,)	
and in their own right,)	
)	
Defendants)	

* * *

APPEARANCES:

KATHRYN A. DUX, ESQUIRE
On behalf of plaintiff
Allstate Insurance Company,

BEBE H. KIVITZ, ESQUIRE and
DOLORES M. TROIANI, ESQUIRE
On behalf of defendants
Zachary Kenney, a Minor, by
his Parent and Natural Guardian,
Maura J. Kenney

JOHN F. McKENNA, ESQUIRE
On behalf of defendants
Christopher Doggendorf, a Minor,
by and through his Parents and
Natural Guardians, Suzanne and
David Doggendorf, and in their
own right

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Allstate Insurance Company's Motion to Dismiss the Counterclaim of Defendants Maura Kenney and Zachary Kenney filed September 18, 2003.¹ For the reasons expressed below, we conclude that the Kenney's counterclaims² are not ripe for judicial review under Article III of the United States Constitution and have failed to state a claim upon which relief may be granted. Accordingly, we grant plaintiff's motion and dismiss the counterclaims of the Kenney defendants.

Procedural History

This civil action is a declaratory judgment action pursuant to 28 U.S.C. § 2201. Plaintiff seeks a declaration that it need not defend the Kenney defendants in a state action according to terms of an insurance contract between Allstate Insurance Company ("Allstate") and Maura Kenney. This action is before the court on diversity jurisdiction. See 28 U.S.C.

¹ On October 1, 2003, the Response of Defendants Maura and Zachary Kenney to Allstate Insurance Company's Motion to Dismiss Counterclaim was filed.

² The Kenneys' counterclaims may be found within Defendants Maura and Zachary Kenney's Answer to Allstate Insurance Company's Complaint for Declaratory Judgment with Affirmative Defenses and Counter-Claim filed August 18, 2003.

§ 1332. On March 7, 2003, this case was reassigned to the undersigned from the calender of our former colleague United States District Judge Jay C. Waldman.

Count I of the Kenney defendants' counterclaims avers bad faith under Pennsylvania state insurance law. See 42 Pa.C.S.A. § 8371; W.V. Realty Inc. v. Northern Insurance Company, 334 F.3d 306, 311-312 (3d Cir. 2003). Count II alleges breach of contract. The counterclaims are before the court on diversity jurisdiction. See 28 U.S.C. § 1332.

Facts

Based upon the allegations in the Kenney defendants' counterclaims, the following are the pertinent facts. On February 4, 2002, Christopher Doggendorf, a minor, by and through Suzanne and David Doggendorf, brought suit against Zachary Kenney and Maura Kenney in the Court of Common Pleas of Chester County, Pennsylvania.

The allegations in the state court action stemmed from an incident in which Zachary Kenney was alleged to have struck Christopher Doggendorf. The state court Complaint avers that Zachary Kenney "[i]ntentionally and knowingly [struck] the minor plaintiff so as to bring about bodily harm".³ The state court

³ Response of Defendants Maura and Zachary Kenney to Allstate Insurance Company's Motion to Dismiss Counterclaim, Exhibit A.

Complaint also claims that Zachary Kenney "[r]ecklessly and wantonly [struck] the minor plaintiff with such force as to cause bodily harm."⁴

The state Complaint further contends that Maura J. Kenney was negligent in the supervision of her son, Zachary Kenney. The Doggendorfs aver that it was Maura Kenney's negligent supervision of Zachary Kenney that was a proximate cause of Christopher Doggendorf's injuries.

Maura Kenney informed Allstate of the state court Complaint. On March 4, 2003, Allstate informed Ms. Kenney that it was providing her a defense to the suit subject to a reservation of rights. On October 17, 2002, counsel whom Allstate provided to the Kenney's in the state court action agreed to stay the state court action while Allstate sought the within declaratory judgment.

Allstate filed its Complaint for a declaratory judgment with this court on April 23, 2002. Counsel whom Allstate provided to the Kenney's in the state court action led Ms. Kenney to believe that if she filed no response to the federal action, then she would likely survive the state court action because she would be judgment-proof without Allstate's insurance coverage. Moreover, counsel informed Ms. Kenney that the Doggendorfs would

⁴ Response of Defendants Maura and Zachary Kenney to Allstate Insurance Company's Motion to Dismiss Counterclaim, Exhibit A.

dismiss the state action if she did not have insurance coverage.

An entry of default was entered in the federal action against the Kenney defendants on October 21, 2002 by the Clerk of Court of the United States District Court for the Eastern District of Pennsylvania. However, on June 16, 2003, counsel for the Kenney defendants entered their appearance in the federal action. By agreement of counsel, the entry of default was lifted on August 5, 2003.

The underlying state court action has remained in suspense since October 17, 2002. Allstate has refused to engage in settlement negotiations regarding the state action while the within action is pending.

Standard for Motion to Dismiss

When considering a motion to dismiss the court must accept as true all factual allegations in the complaint and construe all reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff[-on-the-counterclaim].

Jurimex Kommerz Transit G.M.B.H. v. Case Corp.,

65 Fed. Appx. 803, 805 (3d Cir. 2003)(citing Lorenz v. CSX Corp., 1 F.3d 1406, 1411 (3d Cir. 1993)). A Rule 12(b)(6) motion should be granted "if it appears to a certainty that no relief could be granted under any set of facts which could be proved." Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997)

(citing D.P. Enter. Inc. v. Bucks County Community College, 725 F.2d 943, 944 (3d Cir. 1984)). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse, 132 F.3d at 906. (Citations omitted.)

Discussion

The judicial power of the federal courts is limited by the "case or controversy" requirement under Article III of the United States Constitution.⁵ See Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000). Essential to Article III standing is a determination that the party seeking judicial intervention has "suffered an 'injury in fact' -- an invasion of a legally protected interest which is (a) concrete and particularized,...and (b) 'actual or imminent, not 'conjectural' or 'hypothetical'". Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351, 364 (1992). (Citations omitted.)

In this case, the Kenney defendants (as plaintiffs-on-the-counterclaim) assert that they are harmed because the state court action has been stayed and Allstate is not behaving as the

⁵ Because Article III courts are courts of limited jurisdiction, we may sua sponte raise issues pertaining to our jurisdiction over the subject matter at issue. See Acierno v. Mitchell, 6 F.3d 970, 974 (3d Cir. 1993).

Kenneys would have them do. However, implicit in the Kenneys' claim is that the state court has rendered no judgment against them and that they have a disagreement with counsel whom Allstate has provided regarding strategy in the state court action. Thus, the issue presented is whether the actions of which the Kenneys complain are ripe for our review.

"The problem [of ripeness] is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Abbott Laboratories v. Gardner, 387 U.S. 136, 149, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681, 691 (1967).

Because Allstate's filing of the within action is the essential action that the Kenneys believe harmed them, we initially address the nature of Allstate's action. By filing this action for declaratory judgment, Allstate is seeking a declaration of "the rights and other legal relations" it has with the Kenneys. 28 U.S.C. § 2201. In essence, Allstate is asking the court to determine whether Allstate would be breaching its contract with the Kenneys if it did not defend or indemnify the Kenneys.⁶ By logical extension, therefore, this action is not an

⁶ We agree with Allstate and the Superior Court of Pennsylvania in Stidham v. The Millvale Sportmen's Club, 421 Pa. Super. 548, 565, 618 A.2d 945, 954 (Pa. Super. 1992), that it is better for an insurance company to seek a declaratory judgment regarding its obligations under an insurance contract than for the insurance company to simply deny benefits to the insured.

announcement that Allstate is refusing to defend or indemnify the Kenneys in the state action.

Under the facts pled by the Kenneys in their counterclaims, it is undisputed both that Allstate has provided the Kenneys with counsel and that the state action is in suspense by agreement of the parties. In their breach-of-contract counterclaim, the Kenneys aver that Allstate has a duty to defend them and to indemnify them from damages resulting from the state court action. However, they fail to plead how Allstate has breached its duty to defend the state court action.

However, Allstate has provided counsel for the Kenneys, and no damages have resulted from the state court action. We do not know, and decline to speculate, whether Allstate would have refused to defend or indemnify the Kenneys in the state action in the absence of a ruling by this court that they are not legally obligated to do so. Accordingly, their breach-of-contract claim is not ripe for our consideration.

To state a claim for bad faith under Pennsylvania law, plaintiff must "show by clear and convincing evidence that the insurer (1) did not have a reasonable basis for denying benefits under the policy; and (2) knew or recklessly disregarded its lack of reasonable basis in denying the claim." W.V. Realty Inc., 334 F.3d 306, 311-312.

As noted above, because Allstate has provided counsel

and no adverse judgment has been entered upon which Allstate has refused to indemnify the Kenneys, plaintiff-on-the-counterclaim cannot show under the facts pled in their counterclaims that Allstate denied benefits under the insurance contract. Because as of this time, Allstate has not denied benefits under the insurance policy to the Kenney defendants, we conclude that the parties are not adverse.

This issue would be ripe for our review if Allstate had already failed to defend or indemnify the Kenneys in the state court action. However, by our separate Order and Opinion of this date granting Allstate's motion for summary judgment, we determined that Allstate, as a matter of fact and law, is not under an obligation to do so. Therefore, Allstate has not breached any of the Kenneys' legal or contractual rights.

Conclusion

Because we conclude that the Kenney defendants have not suffered actual and concrete harm, we conclude that they have failed to state a claim upon which relief may be granted. Accordingly, we grant Allstate's motion to dismiss and dismiss Count I, alleging bad faith, and Count II, alleging breach-of-contract, of the Kenney defendants' counterclaim.

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CHRISTOPHER DOGGENDORF, a Minor,)	
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SUZANNE and DAVID DOGGENDORF,)	
and in their own right,)	
)	
Defendants)	

ORDER

NOW, this 8th day of October, 2003, upon consideration
of Allstate Insurance Company's Motion to Dismiss the

Counterclaim of Defendants Maura Kenney and Zachary Kenney filed September 18, 2003; upon consideration of the Response of Defendants Maura and Zachary Kenney to Allstate Insurance Company's Motion to Dismiss Counterclaim filed October 1, 2003; upon consideration of the briefs of the parties; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that plaintiff's motion is granted.

IT IS FURTHER ORDERED that Counts I and II of defendants Maura and Zachary Kenney's counterclaim against plaintiff Allstate Insurance Company are dismissed.

BY THE COURT:

James Knoll Gardner
United States District Judge